

First-Time Homebuyer Credit New Provisions in November 2009 Legislation

Purpose

This VTA provides an overview of the First-time Homebuyers Credit, with a focus on the new provisions, and provides guidelines to VITA/TCE volunteers on how to prepare returns for taxpayers who qualify for the Credit.

The Worker, Homeownership and Business Assistance Act of 2009, signed into law on Nov. 6, 2009, extends and expands the First-time Homebuyer Credit allowed by previous Acts.

- It also adds documentation requirements for claiming the Credit.
- Due to increased compliance checks by the IRS, failure to submit documentation will slow down the issuance of any applicable refund. **If the taxpayer does not attach the documentation, the Credit may not be allowed.**
- Because of the documentation requirements for claiming the Credit, taxpayers who claim the credit on their 2009 tax return must file a paper return. The return cannot be e-filed and the taxpayer must attach to the return Form 5405, First-time Homebuyer Credit and Repayment of the Credit.

Key Points of the New Legislation

1. The time period for purchasing a home has been extended by 5 months—until April 30, 2010. Taxpayers can also claim a credit for a home purchased after April 30, 2010, and before July 1, 2010, if they entered into a binding contract before May 1, 2010, to purchase the property before July 1, 2010.
2. Members of the uniformed services, Foreign Services, and employees of the intelligence community who meet certain requirements do not have to **repay the credit and have an extra year to purchase a main home.** (See Form 5405 Instructions for details related to these special rules.)
3. The Homebuyer Credit is expanded to include a reduced credit for qualified long-time residents for homes purchased after November 6, 2009. The credit is up to \$6,500 (up to \$3,250 for married filing separately). The maximum credit for first-time homeowners is \$8,000 (up to \$4,000 for married filing separately).
4. For home purchases **after November 6, 2009**, the modified adjusted gross income limits (MAGI) are increased. The full credit is allowed with MAGI of \$125,000, or \$225,000 for joint filers. There is a phase out of the credit for MAGI over these amounts. (See Form 5405 Instructions for details.)
5. For homes purchased **before November 7, 2009** the MAGI limits are \$75,000 or less (\$150,000 or less if married filing jointly). There is a phase out of the Credit for MAGI over these amounts. (See Form 5405 Instructions for details.)
6. Taxpayers cannot claim the Credit for a home purchased after November 6, 2009, if any of the following apply.
 - a. The purchase price of the home is more than \$800,000.
 - b. The taxpayer can be claimed as a dependent on another person's tax return.

- c. The taxpayer (and spouse if married) are under age 18 on the date of purchase.
 - d. You acquire the home from a person related to your spouse.
7. The credit for homes purchased in 2009 or later years does not have to be repaid over 15 years.
8. The new law includes documentation requirements. (See Form 5405 Instructions, revised December 2009, for more information.)

Overview

Homebuyers who purchased a home in 2008, 2009 or 2010 may be able to take advantage of the First-time Homebuyer Credit. The Credit:

- Applies only to homes used as a taxpayer's principal residence.
- Reduces a taxpayer's tax bill or increases his or her refund, dollar for dollar.
- Is fully refundable, meaning the credit will be paid out to eligible taxpayers, even if they owe no tax or the credit is more than the total tax on the return.

For 2008 Home Purchases

The Housing and Economic Recovery Act of 2008 established a tax credit for first-time homebuyers that can be worth up to \$7,500. For homes purchased in 2008, the credit is similar to a no-interest loan and must be repaid in 15 equal, annual installments beginning with the 2010 income tax year.

For 2009 and 2010 Home Purchases

The American Recovery and Reinvestment Act of 2009 expanded the First-time Homebuyer Credit by increasing the credit amount to \$8,000 for purchases made in 2009 before December 1 and eliminating the repayment requirement.

The Worker, Homeownership and Business Assistance Act of 2009 extended the Credit to eligible taxpayers who have a binding contract to purchase a home before May 1, 2010. Buyers must close on the home before July 1, 2010.

The new law also provides a "long-time resident" credit of up to \$6,500 (up to \$3,250 if married filing separately). The taxpayer qualifies as a long-time resident of the same main home if the taxpayer meets all the following requirements.

1. The taxpayer (and taxpayer's spouse if married) previously owned and used the same main home as their main home for any 5-consecutive-year period during the 8-year period ending on the date the taxpayer purchased the new main home.
2. The taxpayer purchased the new main home located in the United States:
 - a. After November 6, 2009, and before May 1, 2010, or
 - b. After April 30, 2010 and before July 1, 2010, and the taxpayer entered into a binding contract before May 1, 2010 to purchase the property before July 1, 2010.

- c. The taxpayer **does not** meet any of the conditions under *Those Who Cannot Claim the Credit* on page 2 of the Form 5405 Instructions.

For homes purchased in 2009 and 2010, the Credit does not have to be paid back unless the home ceases to be the taxpayer's main residence within a three-year period following the purchase. There is an exception for members of the uniformed services, Foreign Service or an employee of the intelligence community who after 2008 sold the home or the home ceased being their personal residence because the taxpayer (or spouse if married) received government orders to serve on qualified official extended duty. (See Form 5405 Instructions for details.)

When to Claim the Credit

The First-time Homebuyer Credit **may not** be claimed prior to the closing date on the purchase of the home. The Credit for purchases made in 2009 can be claimed on either the **2008** or **2009** tax return. The Credit for homes purchased in 2010 can be claimed on either the **2009** or **2010** tax return.

Claiming the credit on a 2008 amended return (Form 1040X)

- Taxpayers who purchased their home in 2009 may amend their 2008 return to claim the credit by filing Form 1040X.
- Sites may prepare Forms 1040X within the guidelines of the VITA/TCE Programs.
- In order to provide the highest quality of customer service, sites should prepare both the 2009 return and the 2008 amendment in the same session whenever possible.

Note: The Instructions to Form 1040X state the interest on an overpayment (refund) will be calculated by IRS and included in the taxpayer's refund.

Publication 17 states the following: *If you receive a refund because of your amended return, interest will be paid on it from the due date of your original return or the date you filed your original return, whichever is later, to the date you filed the amended return. However, if the refund is not made within 45 days after you file the amended return, interest will be paid up to the date the refund is paid.*

Claiming the credit on the 2009 return

- Because of new documentation requirements (outlined below), 2009 returns claiming the First-time Homebuyer Credit cannot be e-filed. VITA/TCE sites should prepare returns using electronic tax preparation software and instruct taxpayers to mail their returns to the appropriate Submission Processing Center with all required attachments. A paper return does take longer to process.
- Filing a 2009 return without the Credit with the intention of amending it at a later date to claim the Credit **is not recommended**. Sites should only do this at the explicit request of the taxpayer.

In all cases, sites should explain the options to the taxpayer, and allow the taxpayer to choose.

Required Documentation

There are some provisions in the Act to enhance the administration of the First-time Homebuyer Credit:

- The new law requires taxpayers to attach a properly executed copy of the settlement statement to the return for tax years ending after November 6, 2009. For most individual taxpayers, this would be for the tax years 2009 and 2010.
- The new law gives the IRS broader authority to deny First-time Homebuyer Credit claims, without having to first audit a taxpayer's return. Known as math error authority, it applies, retroactively, to credits claimed on original and amended 2008 returns, as well as to claims yet to be filed.

What to attach to the return

- For purchasers of conventional homes, a copy of Form HUD-1, *Settlement Statement*, or other settlement statement, showing all parties' names and signatures, property address, sales price, and date of purchase.
- For purchasers of mobile homes who are unable to get a settlement statement, a copy of the executed retail sales contract showing all parties' names and signatures, property address, purchase price and date of purchase.
- For a newly constructed home where a settlement statement is not available, a copy of the certificate of occupancy showing the owner's name, property address and date of the certificate.

Taxpayers qualifying for the credit as long-time residents of the same main home must show that they lived in their old homes for a qualified 5-consecutive-year period. The IRS recommends attaching, in addition to the documents described above, any of the following documentation for the 5-consecutive-year period:

- Form 1098, *Mortgage Interest Statement*, or substitute mortgage interest statements
- Property tax records or
- Homeowner's insurance records

For additional information, please refer to the Form 5405, First-time Homebuyers Credit Instructions and the IRS News Release 2010-06. If you have any questions, please discuss them with your site coordinator, email partners@irs.gov or contact your local IRS SPEC relationship manager.

Thank you for volunteering to serve your community and for your dedication to providing top QUALITY service!

